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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF GUAM**

UNITED STATES OF AMERICA,
Plaintiff,
vs.
GOVERNMENT OF GUAM,
Defendant.

Civil Case No. 02-00022-001

ORDER TO SHOW CAUSE

On October 13, 2009, Attorney Stephanie G. Flores (“Ms. Flores”) filed a document entitled “Motion to Recuse Pursuant to 28 U.S.C. § 455(a) and (b)” in this case. *See* Docket No. 498 at 1; *see also* Docket No. 499 (supporting declaration).

On October 17, 2009, the court issued an order in which it made clear (1) that it would not recognize the motion, since it was not properly filed, and (2) that, even if the motion were properly filed, it would be denied anyway. *See* Docket No. 501.

In that order, the court explained that Ms. Flores’ motion had serious flaws, most of which were sufficient *per se* to warrant disregard or denial of the motion. These include:

- **Gross procedural improprieties.** The motion was procedurally improper in a number of ways.
- **False assertion of party representation.** The motion begins with the statement “COMES NOW, the Government of Guam” Docket No. 498 at 1. Thus, Ms. Flores clearly purports to represent the Government of

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Guam. However, in this case, the Government of Guam is represented by the Attorney General of Guam. *See* Docket No. 501 at 1:24-2:2.

- ***Action in fact on behalf of party without standing to file.*** The rest of the motion makes clear that it is in fact brought on behalf of the Guam Legislature (hereinafter “the Legislature”). *See, e.g.*, Docket No. 498 at 3. The Legislature is part of the Government of Guam and, for purposes of this case, is assumed to have its interests (whatever they may be) adequately represented by the Attorney General of Guam. Thus, while it is bound by the actions of the Government of Guam and the orders of the court in this case, the Legislature is *not* entitled to file motions purporting to vindicate its asserted interests, unless it has first sought *and gained* the court’s approval to do so in accord with Rule 24 of the Federal Rules of Civil Procedure.¹ This was never done. *See* Docket No. 501 at 2:3-15.
- ***No entry of appearance.*** Even if the Legislature had sought and gained approval to intervene in this case as a third party with cognizable interests somehow distinct from the Government of Guam’s, any attorney filing on its behalf must still submit an entry of appearance. Further, any *private* attorney appearing on the Legislature’s behalf would also need to submit evidence of a resolution authorizing that private attorney (as opposed to the Legislative Counsel, *see* 5 G.C.A. § 7115) to appear on its behalf. Neither of these things was done. *See* Docket No. 501 at 2:2; *see also id.* at 2 n. 2.
- ***Motion untimely.*** Finally, even if all the foregoing requirements were satisfied, the motion would still need to be timely, which it clearly was

¹ The court is at a loss to imagine what interest the Guam Legislature may have in this case that is not already adequately represented by the Attorney General of Guam, acting on behalf of the entire Government of Guam.

1 not. *See* Docket No. 501 at 3:18-4:24.²

- 2 • ***Frivolous legal theory.*** Procedural problems aside, Ms. Flores’ entire motion
3 rests on interpreting Paragraph 10(b) of the Ordot case Consent Decree such that
4 *any* third party may discharge the Government of Guam’s obligations under the
5 Consent Decree by building something that generically qualifies as a “landfill,”
6 notwithstanding any concerns that the *actual parties to the Consent*
7 *Decree*—namely, the United States and the Government of Guam—may have
8 relative to that interloper’s capacity to resolve the problems that gave rise to the
9 Consent Decree. As the court has indicated, this interpretation is unreasonable.
10 *See* Docket No. 501 at 7:19-8:27. In fact, the court is inclined to find this
11 interpretation indefensible.
- 12 • ***Unsupported factual contentions.*** Procedural and legal problems aside, the
13 motion was factually inadequate.
- 14 • ***No disqualifying familial relationship.*** The motion alleged a
15 disqualifying familial relationship between the court and Ms. Jeanette G.
16 Leon Guerrero. *See* Docket No. 498 at 8-9. However, in a prior hearing,
17 the court had already disclosed that no such relationship existed. *See*
18 *generally* Docket No. 393. Ms. Flores had access to the transcript of that
19 hearing, and *in fact quoted it* in her motion. *See* Docket No. 498 at 4-5.
20 Had counsel carried out a diligent investigation, she would have
21 discovered that what the court stated was true: the undersigned judge has
22 no familial relationship with Ms. Leon Guerrero, by blood *or* marriage,
23 that would warrant her recusal from this case.

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26 ² Again, as the court has stated, the untimeliness of the motion is suspect in light of the missed deadlines in the
27 related appellate case. *See* Docket No. 501 at 4:18-24. This is another example of Ms. Flores’ failure to follow proper
28 procedures. While counsel may assert that her failure to prosecute the appellate case was a strategic decision, the court
would point out that there is no sound strategy in letting a case languish before the Ninth Circuit, as doing so opens the
relevant attorney—*i.e.*, Ms. Flores—up to sanctions.

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- **Positive evidence of no knowledge.** After making clear that scienter is an element of the “substantially affected interest” test for recusal, *see* 28 U.S.C. § 455(b), Ms. Flores completely failed to account for the fact that the undersigned judge had already stated, on the record, that she does not know what properties Ms. Leon Guerrero owns—which fact Ms. Flores mentioned in an earlier part of her motion. *See* Docket No. 498 at 4 (quoting Docket No. 393) (“And so, another thing with regard to where she lives, as I know it, she lives in Apra Heights. And as far as the site of Guatali, or Atantano, I honestly don’t know exactly where that site is. I personally have not visited that site. And I know with regard to her ownership of a lot, *I have no idea what she legally owns*; she’s very private, so she doesn’t talk to me about her home. In fact I thought her home that she lives in Apra Heights is owned by one of her sons. *As far as any interest in any other lots, I have no idea, no knowledge; she’s never talked to me about her property assets.*”) (emphasis added).
- **Inadequate evidence of property ownership.** Counsel failed to provide the court with any Preliminary Title Report that would conclusively show Ms. Leon Guerrero’s title to any property in Santa Rita. *See* Docket No. 501 at 6 n. 7.
- **Allegations of official misconduct.** Ms. Flores’ motion contained a footnote quoting an anonymous internet commentator who insinuated that the undersigned judge might be exercising improper sway over the Office of the Attorney General of Guam, via family ties. *See* Docket No. 498 at 13 n.2. The court does not see this as reasonable evidence to adduce in support of a very serious allegation.

1 Taken together, these errors appear reckless or incompetent, and seem inconsistent with
2 Ms. Flores' duty to sign and present to the court, in good faith and after an inquiry reasonable
3 under the circumstances, *only* those documents that (1) are not presented for any improper
4 purpose, such as to cause unnecessary delay or needlessly increase the cost of litigation; and (2)
5 contain legal contentions warranted by existing law or by a nonfrivolous argument for extending,
6 modifying, or reversing existing law or for establishing new law; and (3) the factual contentions
7 have evidentiary support or, if specifically so identified, will likely have evidentiary support after
8 a reasonable opportunity for further investigation or discovery. *See* Fed. R. Civ. P. 11(b)(1)-(3).

9 Accordingly, the court hereby **ORDERS** Ms. Flores to show cause why the court should
10 not sanction her pursuant to (1) Rule 11 of the Federal Rules of Civil Procedure, and (2) the
11 court's inherent powers incidental to the conduct of its business, among which is the power to
12 sanction so as to protect the due and orderly administration of justice and maintain the authority
13 and dignity of the court. *See* Fed. R. Civ. P. 11; *Roadway Express, Inc. v. Piper*, 447 U.S. 752,
14 764 (1980). Ms. Flores is specifically instructed to account for each of the errors described
15 above by explaining how they were reasonable. Ms. Flores' response shall be filed by November
16 3, 2009. Thereafter, the court shall set this matter for a hearing.

17 The undersigned judge has been familiar with Ms. Flores in her professional capacity for
18 many years, and has always been impressed by the way in which she has managed to balance
19 vigorous representation of her clients' interests with attention to her obligations under the Federal
20 Rules of Civil and Criminal Procedure and the Rules of Professional Conduct. Simply put, the
21 motion is uncharacteristic of Ms. Flores and her work. In fifteen years as a judge of both the
22 local and federal courts of Guam, the undersigned judge has very rarely issued orders to show
23 cause. Thus, the court issues this order in dismay.

24 **SO ORDERED.**



25 /s/ Frances M. Tydingco-Gatewood
26 Chief Judge
27 Dated: Oct 19, 2009
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